A

JOINT SUPPLEMENTAL REPLY DECLARATION OF ROBERT H. GERTNER AND GUSTAVO E. BAMBERGER

ATTACHMENT A

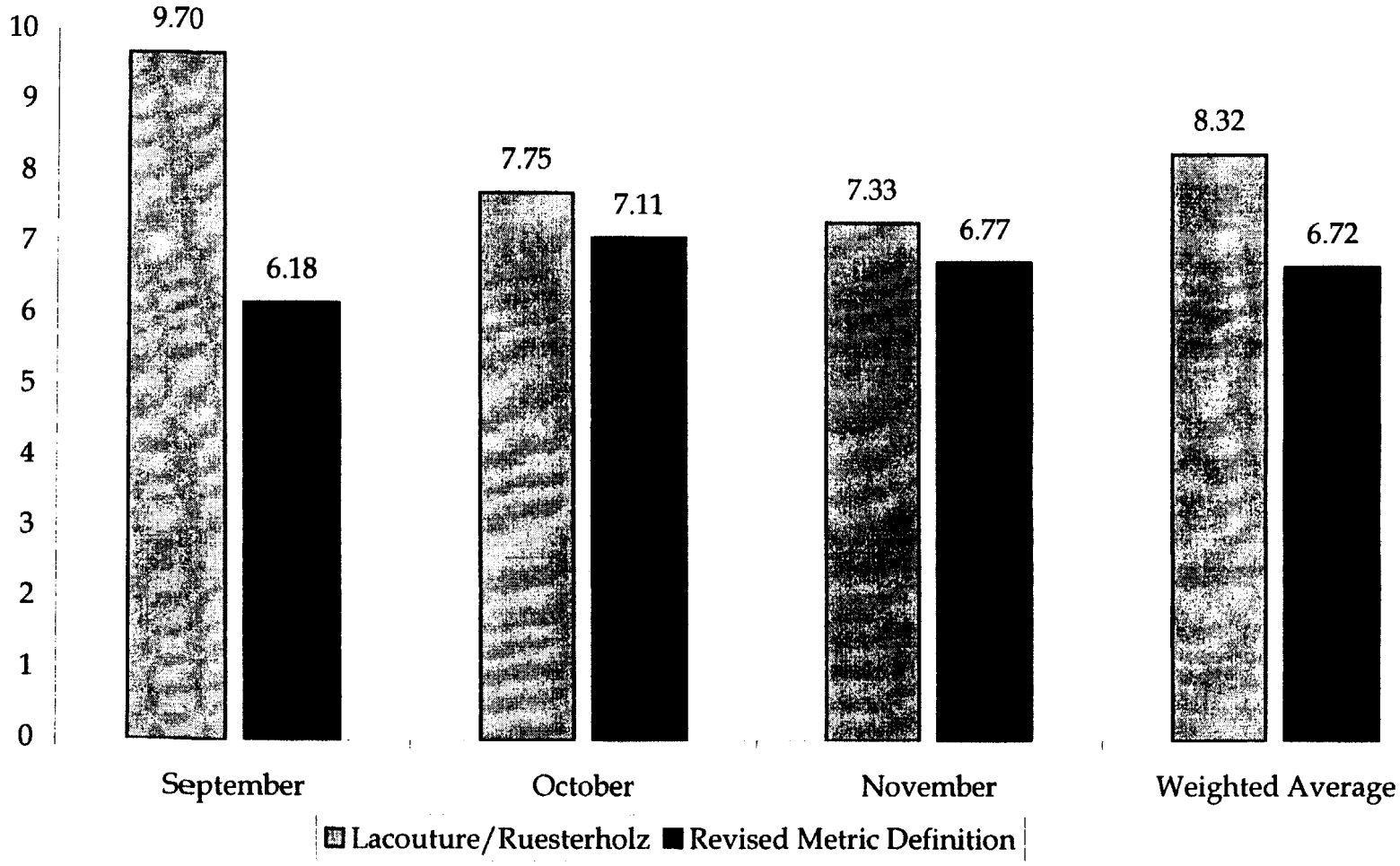
Attachment A
Adjusted Performance on Metric PR-2-02

September 2000 - November 2000

	Figures Reported in Lacouture/Ruesterholz Declaration		Recalculation Using Revised Metric Definition and Excluding Strike Affected Orders in September	
	Percent	n	Percent	n
September	9.70	848	6.18	536
October	7.75	934	7.11	680
November	7.33	647	6.77	450
Weighted Average	8.32		6.72	

Attachment A
Adjusted Performance on Metric PR-2-02

September 2000 - November 2000



REDACTED FOR PUBLIC INSPECTION

JOINT SUPPLEMENTAL REPLY DECLARATION OF ROBERT H. GERTNER AND GUSTAVO E. BAMBERGER

ATTACHMENT B

REDACTED FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England Inc.,	)	
Bell Atlantic Communications, Inc.,	)	
(d/b/a Verizon Long Distance), NYNEX	)	CC Docket No. 01-9
Long Distance Company (d/b/a Verizon	)	
Enterprise Solutions), and Verizon Global	)	
Networks Inc., for Authorization To Provide	)	
In-Region, InterLATA Services in Massachusetts	)	

SUPPLEMENTAL REPLY DECLARATION OF WILLIAM E. TAYLOR

Table of Contents

I. INTRODUCTION

1. My name is William E. Taylor. I submitted a Declaration in support of Verizon's initial application to provide in-region interLATA service in Massachusetts on September 22, 2000, and a Reply Declaration on November 3, 2000. My qualifications are set forth in my Declaration.

2. Verizon has asked me to evaluate and respond to the February 6, 2001, supplemental reply declarations prepared on behalf of WorldCom (one by A. Daniel Kelley and the other by Paul Bobeczko and Vijetha Huffman). Verizon has also asked me to comment on AT&T's claims relating to the state of competition in Massachusetts, and it has asked me to assess the claims of several commenters that Verizon is somehow responsible for the financial difficulties of several CLECs that focus on providing DSL services.

II. UNE-P RATES IN MASSACHUSETTS ARE NOT A BARRIER TO LOCAL RESIDENTIAL COMPETITION.

3. The main argument by Dr. Kelley – and echoed by Bobeczko and Huffman – amounts to the following: regardless of the substantial facilities-based competition, resold lines, and growing unbundled network element platform ("UNE-P") competition in Massachusetts, the Commission should deny Verizon's application to enter the interLATA market in the state because WorldCom and other long distance incumbents have chosen not to offer local service to residential customers there *via* UNE-Ps. To support this argument, WorldCom presents what purport to be estimates of its local revenues and UNE-P costs for an illustrative residential customer in several geographic areas of Massachusetts. But the premise of their argument, as well as the evidence used to support it, are fatally flawed.

4. As Dr. Kelley (¶ 9) implicitly recognizes, facilities-based entry is a more potent and long-lasting form of local competition than UNE-P entry, and facilities-based entry is therefore a stronger indication that competition is irreversible. First, the willingness of competitors to make massive facilities investments indicates that they are confident of their long-term viability. Thus, local competition must be irreversible. Second, facilities-based investments are sunk. These sunk investments would deter any attempt by Verizon to exercise market power, and they would deter any attempt by Verizon to drive competitors out of the market.

5. Facilities-based competition in Massachusetts – the most potent form of entry – is substantial and is continuing to grow rapidly. As I reported before, local competition in general and facilities-based competition in particular are more extensive in Massachusetts than they were in New York prior to the Commission's approval of Verizon's application in the latter state. *See* Taylor Decl. ¶ 26 and Att. A, Ex. 2. In particular, residential facilities-based competition was 500 percent greater in Massachusetts at the time of Verizon's original application than it was in New York at the time Verizon filed its application in that state. *See* Taylor Reply Decl. ¶ 20.

6. Competition in Massachusetts has continued to increase. As I reported, "through September [2000], competitors are serving a very conservatively estimated 731,000 lines, more than 466,000 of which are facilities-based. The comparison between July and September shows an increase of eight percent in total lines and an increase of eleven percent in facilities-based competition during the August and September months." *Id.* ¶ 19. From September to January 2001, total competitive lines grew to at least 851,000 (an additional 16 percent in just five

months),[1] and competitive facilities-based lines grew to at least 554,000 (an additional 19 percent). Cumulatively, from July to January, total competitive lines grew at an annualized rate of 52 percent, and competitive facilities-based lines grew at an annualized rate of 65 percent.

7. Relative to the Verizon lines in service in Massachusetts and New York, respectively, the number of total competitive lines in Massachusetts in January 2001 was twice the number in New York at the time of Verizon's application for that state in July 1999.[2] Further, since Verizon's initial application for Massachusetts, competitors have added over 64,000 residential lines in the state and now serve over 185,000 residential lines, over 82 percent of which are facilities-based.[3] Relative to the total lines in the respective states, the CLECs' number of residential lines in Massachusetts is over twice what it was in New York at the time of Verizon's initial application there,[4] and the number of CLECs' facilities-based residential lines is over 11 times as large as it was in New York.

8. Even competitive UNE lines have grown substantially, contrary to Dr. Kelley's position that UNE prices are too high in Massachusetts: by January 2001, UNE voice-grade equivalent loops had grown to about 89,000, an annualized increase of 213 percent since July.[5]

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[1] To get total CLEC lines, I sum E911 listings, resale lines, and UNE-P lines, all on a voice-grade equivalent basis. My use of E911 listings in this and other results yields highly conservative estimates. A multi-line customer location can be recorded as a single E911 listing. E911 listings also fail to capture access lines and locations that are not connected to Verizon's local switched network but may be used to connect to long distance switches; these could also be used to provide local service.

[2] (851,000/5,400,000)/(1,100,000/14,100,000) = 2.02.

[3] These calculations are based on directory listings. Such listings understate the actual number of lines served because a single listing can and frequently does represent multiple lines.

[4] (185,000/5,400,000)/(236,000/14,100,000) – 1 = 105 %. The figure of 236,000 residential CLEC lines in New York is from William E. Taylor, Declaration on behalf of Bell Atlantic, *Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295, ¶ 44 (FCC filed Sept. 29, 1999).

[5] In this calculation I include UNE-P loops and stand-alone UNE loops other than ADSL loops.

Also impressive is the growth in UNE-P lines after Verizon's UNE price reductions, effective October 13, 2000: from the end of October to the end of January, total UNE-P lines grew at an annualized rate of 169 percent.

9. Other indicators of competition also increased: from July 2000 to January 2001, ported numbers grew at an annualized rate of 66 percent;[6] interconnection trunks grew at an annualized rate of 45 percent; DSL UNE loops grew at an annualized rate of 159 percent, and interconnection minutes from CLECs to Verizon grew at an annualized rate of 119 percent. Completed and pending collocation arrangements have increased to the point that they exist in wire centers serving 98.2 percent of Verizon's lines.

10. All the above statistics clearly contradict AT&T's claim that local competition in Massachusetts is "moribund." AT&T at 25. In addition, I should note that AT&T has about twenty times more facilities-based residential lines in Massachusetts today – on an absolute basis – than it had residential UNE-Ps and facilities-based lines combined in New York at the time Verizon applied there.

11. AT&T also claims that local competition in New York is "decelerating." AT&T at 15. Yet, from July to December in New York, CLECs added an average of over 113,000 lines per month – including at least 25,000 facilities-based lines per month and over 82,000 UNE-P lines per month. At that rate, the CLECs are accumulating ten percentage points of market share per year – much faster than AT&T's long-distance competitors have taken share from it.

12. Dr. Kelley claims that, in Massachusetts, "excessive UNE prices present an insurmountable barrier problem for potential entrants." WorldCom, Kelley Decl. ¶ 7. That

[6] Because data were not available yet, this figure is for growth to December 2000, not January 2001.

claim is nonsense, for several reasons. First, Verizon set the level of UNE rates in Massachusetts to match the level in New York, which the New York Public Service Commission and the FCC accepted as being TELRIC-based and satisfying the Checklist. Yet, the demand for residential UNEs in New York is large and growing, whereas the demand for residential UNEs in Massachusetts is much lower (although it also is growing rapidly). These facts indicate that what may be deterring competition for residential UNEs in Massachusetts is residential retail prices that are too low, not UNE prices that are too high. Alternatively, as discussed below, the long distance incumbents – the predominant providers of residential UNE-Ps – may be refusing to enter the market in an attempt to protect their shares of the long distance market.

13. Second, Bobeczko and Huffman compare local revenues and UNE-P costs only for an illustrative residential customer. Yet competitors design their marketing and pricing plans to target the most profitable customers. Given the low retail prices for basic residential service in Massachusetts, a natural entry strategy would be to focus on customers that want several vertical features. Doing so would generate substantially more profits than Bobeczko and Huffman's illustration suggests. For example, in New York, WorldCom offers a package of six of its most popular features for $15.99,[7] yet the cost of providing such features is very small. Further, a customer with two lines and the same amount of usage as shown in Bobeczko and Huffman's illustration would also be substantially more profitable than what they show.

14. Third, there is wide agreement that many customers prefer one-stop shopping for local service, intraLATA toll service, interLATA and international toll service. Customers might also prefer to buy their Internet and cable TV service from the same carrier. Thus, by narrowing

[7] *See* http://www.mciworld.com/for_your_home/products_services/local/ny/premiumpack.shtml (accessed February 20, 2001).

their analysis solely to local service, Bobeczko and Huffman understate the profitability of selling local service. More realistically, a carrier that signs up a customer for local service significantly increases its chances of collecting profits from all those other services that Bobeczko and Huffman left out of their analysis. Indeed, this is precisely the entry strategy that AT&T and WorldCom have followed in the markets they have chosen to enter, offering local service primarily or exclusively to their existing long distance subscribers. If Bobeczko and Huffman considered these profits – which WorldCom's entry strategy demonstrates that it does as a business matter – it would add significantly to the profit margins they show in their illustration.

15. Fourth, Dr. Kelley argues that UNEs facilitate future facilities-based entry. *See* WorldCom, Kelley Decl. ¶ 9. He says that a competitor can use UNEs to build up a customer base in a wire center and, when it has accumulated enough customers, it can collocate in that wire center and substitute its own switching for Verizon's switching and buy unbundled loops. Although this scenario sounds plausible, Dr. Kelley presents no evidence supporting the claim that this strategy is crucial to competitive success or even that carriers have pursued this strategy in other states – particularly with respect to residential customers. Indeed, there is no evidence that any of the three long distance incumbents have begun converting their residential customers served through UNE-Ps to their own facilities, nor have such carriers announced any plans or intentions to do so. Moreover, Dr. Kelley's biggest mistake is to pretend that using UNEs as a stepping stone to facilities-based competition is the *only* possible entry and expansion scenario. There are at least two other reasonable scenarios to serve residential customers that he ignores.[8]

[8] The text focuses on residential customers, since that class of customers appears to be the only one at issue. To serve business customers, an additional scenario that competitors have adopted is to construct fiber rings and fixed wireless arrangements.

One such scenario is that adopted by AT&T – provide cable telephony and cable modem service over existing cable TV facilities.[9] In addition, RCN has deployed an overbuild cable network in Massachusetts and has adopted the same entry strategy. Carriers can also deploy fixed wireless services, as WorldCom, AT&T, and other carriers are increasingly doing in other states.

16. Fifth, the Telecommunications Act of 1996 ("the Act") does not require – nor would any sensible regulatory regime require – that UNE rates be set at a level that guarantees a certain profit margin to competitors. Instead, the Act specifies that UNE prices must be based on forward-looking costs. Residential basic rates, by contrast, are subject to political pressures and, because of those pressures, have been kept artificially low by state regulatory commissions for decades. Given that pressure, it should not surprise us if calculations for some states showed that a substantial number of residential customers were not profitable to serve via UNE-Ps. Such an outcome should not block a Section 271 application, not least because there are other sources of profit besides residential basic rates, such as those Verizon customers that purchase a number of vertical services. In addition, if the Commission were to insist that UNE prices be set so low as to ensure WorldCom's profitability for the mass of residential customers, in the face of uneconomically low residential retail local prices, then such low UNE prices would discourage facilities-based entry, the most potent form of competition. In any case, as I showed before, even if Verizon were to maintain a large share of local customers, it would not have an incentive to conduct a price squeeze in the long-distance market, and existing safeguards are sufficient to

[9] Contrary to Dr. Kelley's implication (¶ 9, n. 8), AT&T's commitment to cable telephony appears unaffected by its recent announcement that it would spin off its cable holdings. *See* Dick Martin (AT&T Executive Vice-President), "AT&T Is Paving the Broadband Highway," *BusinessWeek Online Edition*, http://www.businessweek.com/2001/01_02/c3714163.htm#b3714164 (accessed January 2, 2001).

prevent any harm to long-distance competition.[10] *See* Taylor Decl. ¶¶ 34-52; Taylor Reply Decl. ¶¶ 27-43.

III. VERIZON'S ENTRY INTO THE LONG-DISTANCE MARKET WILL STIMULATE LOCAL COMPETITIVE ENTRY.

17. Dr. Kelley maintains that WorldCom enters local markets when those markets are open and when UNE-P prices make entry lucrative, and he denies that Verizon's entry into the long-distance market would influence WorldCom's entry decision. *See* WorldCom, Kelley Decl. ¶¶ 14-15. As I explained in my Reply Declaration, "Dr. Kelley ... explains that many customers are willing to pay a premium to get their local and long-distance service from the same provider and that Verizon would take away customers who prefer one-stop shopping from interexchange carriers." Taylor Reply Decl. ¶ 5. Given Dr. Kelley's own information, Verizon's entry into the long-distance market would enable it to attract many of WorldCom's long-distance customers who prefer one-stop shopping. WorldCom could retain those customers and the long-distance profits it earns from them if it were to enter the local market to match Verizon's one-stop shopping offer. Thus, Verizon's entry must significantly enhance WorldCom's incentive to enter the local market. Dr. Kelley's position that Verizon's entry would make no difference is not credible. He also obfuscates the issue by attacking a straw man – pretending that my position was that the *only* determinant of WorldCom's local entry decisions in a state is whether a Bell Operating Company ("BOC") has entered the long-distance market in that state.[11]

[10] Dr. Kelley appears to have misread the discussions in my Declaration and Reply Declaration. *See* WorldCom, Kelley Decl. ¶¶ 8-9. The point of my discussion there – as clearly stated by the headings and the text – was that competition in the long-distance market would not be in jeopardy if Verizon enters the market. Dr. Kelley appears to think my discussion was about competition in the local market.

[11] Dr. Kelley also contradicts himself: he claims that an open local market is necessary for WorldCom's entry, yet he admits that WorldCom has entered the local market in Pennsylvania, Illinois, and Michigan – states where he says the local market is not yet open. *See* WorldCom, Kelley Decl. ¶¶ 14-15.

18. There is another implication of the inescapable conclusion that Verizon's long-distance entry threatens an interexchange carrier's long-distance profits: the interexchange carrier could have an incentive to game the regulatory system. By withholding its local entry, the interexchange carrier can hope that its absence from the local market might postpone approval of Verizon's Section 271 application. Withholding its local entry would postpone earning local profits, but that sacrifice might be smaller than the gain from retaining its long-distance profits for a longer period.

19. Therefore, a low level of UNE-P competition is not circumstantial evidence that Verizon's UNE prices are too high, as Kelley maintains. *See* WorldCom, Kelley Decl. ¶¶ 5-7. Moreover, evidence from New York shows that CLECs can compete via UNE-Ps. For example, AT&T boasts that it has gained more local service customers from Verizon than it has lost long-distance customers to Verizon.[12] All of these customers will have benefited from the ability to purchase a local/long-distance service bundle. It is ironic that AT&T and WorldCom are holding out Texas and New York as models for Massachusetts, when they are at the same time threatening to withdraw from those markets as unprofitable despite having signed up hundreds of thousands of customers.[13] If AT&T and WorldCom cannot compete at TELRIC-approved rates, then that suggests that they are not efficient CLECs. If WorldCom also claims that it could not be profitable by entering the local market in Massachusetts, then that might also be due to its efficiency instead of questionable UNE prices.

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[12] *See, e.g.*, Speech by C. Michael Armstrong at the National Press Club, Washington, D.C. (Feb. 7, 2001).

[13] Y. Dreazen and D. Solomon, "AT&T Chief Says Baby Bells May Price Company Out of Local-Service Markets," *Wall Street Journal Online* (February 8, 2001), http://interactive.wsj.com/articles/SB981590788145314852.htm; WorldCom Comments at 11-12, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 (FCC filed January 8, 2001).

IV. THE LONG-DISTANCE MARKET IN MASSACHUSETTS WOULD BECOME MORE COMPETITIVE WITH VERIZON'S ENTRY.

20. Verizon – given its considerable customer base and market presence within its region – remains a more formidable competitor than any other potential long distance entrant in Massachusetts. *See* Taylor Decl. ¶ 6. The best real-life example of the benefits consumers will enjoy is evidenced by the impact of Verizon's provision of long-distance services in New York. A September 2000 TRAC study estimated consumer savings for consumers who switched to Verizon's long-distance service at between more than $46 million and $120 million. *See id.* ¶ 8. Since September, Verizon has signed up more long-distance customers in New York – over 1.2 million in total by the end of 2000 – and both its prices and competitors prices have declined further. *See* Breen Reply Decl. ¶¶ 3, 5, 7-9. Therefore, benefits to consumers – those who have switched to Verizon's lower-priced plans or have taken advantage of the price reductions that the long-distance incumbents have made in response to Verizon's entry – are even higher than those estimated by TRAC five months ago.

21. Dr. Kelley asserts without support that the long-distance market is highly competitive, and he criticizes the evidence in my Reply Declaration demonstrating the lack of competition for residential customers.[14] *See* WorldCom, Kelley Decl. ¶¶ 17-21. Dr. Kelley complains that I compared AT&T's price changes with changes in access charges although access charges are only one element of costs. Although that is almost true,[15] doing so is appropriate. In 1991, the beginning of my data series, the access charges and the other fees that

[14] Dr. Kelley also says, "The BOC contention that local markets are competitive when the long distance market is not is simply silly." WorldCom, Kelley Decl. ¶ 17. That statement attacks yet another strawman. Verizon and declarations on its behalf have shown that local markets are open to competition.

[15] My calculations also account for changes in Presubscribed Interexchange Carrier Charges and universal service assessments.

AT&T paid to serve its residential customers amounted to about half of AT&T's residential revenues. The next largest cost component would be network costs, and they have fallen rapidly; thus, my calculations conservatively estimate the increase in AT&T's profit margin.[16]

22. Dr. Kelley appears to have read my Reply Declaration selectively. He says that I have only examined "basic rates paid by some AT&T customers." WorldCom, Kelley Decl. ¶ 18. He ignores the reported fact that 60 percent of AT&T's customers pay basic rates, which clearly implies that Dr. Kelley's referring to "some" customers is a gross distortion. *See* Taylor Reply Decl. ¶ 7. He also ignores the fact that I also reported the price increase that AT&T imposed on its residential customers as a whole – net of access charges and other fees, 108 percent. *See id.* ¶ 8. He further ignores the fact that I reported that "as of July 1999, only one percent of AT&T's residential customers were paying prices that were as low as what AT&T's average rates would have been if only AT&T had passed through the reductions in access charges and other fees." *Id.* ¶ 9. Thus, AT&T's price increase was general, not confined to some narrow subset of consumers.

23. Dr. Kelley complains that my data series starts in 1991, while AT&T was still regulated, and that regulation or AT&T's residual market power might have distorted rates. *See* WorldCom, Kelley Decl. ¶ 19. He ignores the fact that AT&T imposed the vast bulk of its price increases on residential customers well after the Commission released AT&T from rate regulation in 1995. AT&T's largest price increases were in 1998 and 1999, when, according to the market structure measures that Dr. Kelley stresses, the long-distance market was supposed to

[16] Dr. Kelley asserts, "In competitive markets, prices rise and rate structures change in response to cost and demand changes." WorldCom, Kelley Decl. ¶ 18. I disagree. In competitive markets, prices rise only in response to cost changes, not demand changes. In any case, Dr. Kelley says nothing about what demand changes might have occurred that would account for AT&T's massive price increases.

have been the most competitive. A competitive market is supposed to protect customers from price increases; it clearly has failed to do so.

24. There is further conclusive evidence contradicting Dr. Kelley's unsupported assertion that the residential long-distance market is highly competitive: wherever a BOC has entered the long-distance market, prices have declined dramatically. If the market were already competitive, such an outcome could not occur, since prices would already have been equal to costs. As I showed before, "Following SNET's entry into the long distance market, and before Verizon's entry into the long distance market in New York, AT&T's Connecticut customers paid on average 24 percent less than its New York customers for the identical interstate direct dial service. In addition, SNET's customers in Connecticut paid on average 36 percent less than AT&T's customers in New York did." Taylor Decl. ¶ 15. Further, Verizon's interstate prices in New York after its long-distance entry were substantially lower than those of AT&T, WorldCom, and Sprint; and AT&T reduced its intrastate prices in New York after Verizon's entry. *See id.* ¶¶ 8-13. Since my Declaration, Verizon has offered additional calling plans, and AT&T has increased its universal service surcharge relative to that of Verizon; thus, consumer savings from Verizon's entry are likely to be larger than I had earlier calculated.[17] Similarly, after SBC's entry into the long-distance market in Texas, AT&T reduced its intrastate price to only $0.01 per minute above intrastate access charges, whereas its intrastate price remained

[17] Before, I only accounted for Verizon's "Timeless" calling plan, which charges $0.10 per minute. Now Verizon offers additional calling plans that would broaden its appeal. It offers a "Best Times" calling plan, which charges $0.05 per minute every evening and all weekend long and charges $0.07 per minute at other times; its monthly subscription fee is $4.75. Verizon also offers three block-of-time calling plans called "Talk Time"—180 minutes for $15 per month, 300 minutes for $24 per month, and 500 minutes for $39 per month; the average per-minute prices for these plans are $0.083, $0.08, and $0.078, respectively. *See* http://www.callbell.com/evalues/products/index.htm (accessed February 21, 2001). Verizon's charge for the universal service fund is only 5.877 percent, whereas AT&T has increased its charge to 9.9 percent. *See* http://www.callbell.com/evalues/LDUniversialFees.htm and https://www.shop.att.com/portal/offer/index.jhtml?service=ld&offer=OR7_395&portal=corpmkt_7395 (accessed February 21, 2001).

$0.07 and $0.09 per minute above intrastate access charges in Arkansas and Missouri, respectively, where AT&T was not yet subject to SBC's competition. *See* Taylor Reply Decl. ¶ 14.

V. VERIZON IS NOT RESPONSIBLE FOR THE DEMISE OF DATA CLECs.

25. Covad, NorthPoint, HarvardNet, Rhythms, DSL.net, Digital Broadband Communications, and other DSL service providers – a.k.a. data CLECs – have experienced financial difficulties recently and have either curtailed or abandoned their DSL operations. Verizon is in no way responsible for these companies' difficulties, contrary to the assertions of some commenters. *See* CIX at 11, Covad at 5-6, and the Massachusetts Attorney General at 12. Instead, data CLECs were part of the dot-com bubble that has finally burst. Technology shares in general have plummeted. For instance, since March 2000 the NASDAQ index has fallen over 50 percent; CLEC shares have fallen over 75 percent; and data CLEC shares have fallen over 90 percent. The burst technology bubble has reduced the ability of companies to obtain venture capital if they cannot show immediate profits. And these companies adopted business models that depended on the ability to raise such capital for their continued viability.

26. Data CLECs have indeed admitted that Verizon is not the cause of their woes. As NorthPoint's CEO, Elizabeth Fetter, put it, "We were highly incented by Wall Street to spend money like drunken sailors,"[18] leaving data CLECs ill-prepared for a financial downturn. As the CEO and a founder of the data CLEC Jato Communications, has noted, "in hindsight, (there were) a lot of naïve assumptions that capital would always be there to fund the business plan."[19] As a spokesman for one data CLEC, Vitts Networks, has explained, companies tried for "success

[18] Scott Woolley, "Highway to Hell," *Forbes Magazine* (February 19, 2001).

[19] K. Hudson, "Jato's Fall Reflects Industry Problems," *Denver Post* (December 30, 2000) at C1.

by growth, instead of growing by success. Some of these guys overbuilt and got way out ahead of their funding."[20]

27. Covad's chairman, Charles McMinn, observed, "There has been a dramatic shift in focus that has occurred in our industry, turning us from growth to profitability as the metric."[21] He also said, "The market has changed what it's rewarding. It is no longer rewarding gross of lines as the number one metric – it is rewarding a path to profitability."[22] HarvardNet's President, Mark Washburn, likewise announced that "[t]he markets have gone from a position of, 'What will you do for me next year?' to 'What will you do for me this quarter?'"[23]

28. Similar financial difficulties are affecting data CLECs' main customers – Internet service providers ("ISPs") – many of whom are not paying their bills, which has become a major contributing factor to the financial difficulties of the data CLECs themselves. It is generally ISPs who are the sales channel for the data CLECs. ISPs' failure to pay their bills has therefore contributed significantly to the data CLECs' financial problems.[24] "Delinquent and 'at-risk' ISPs account for 58% of [Covad's] total lines."[25] As one DSL analyst has noted, "Having too many ISP partners resell DSL may have been one of the key mistakes of the data competitive

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[20] P. Howe, "DSL Start-Ups Begin to Fold Before Turning a Profit, While Bells Sit Pretty," *Boston Globe* (December 17, 2000) at F1.

[21] J. Johnson, "DSL Forecast: Foggy, But Clear Road Beckons," http://www.clec.com (January 4, 2001). *See also* J. McKay, "Just a Stumble – DSL Companies See Hard Financial Times But Resist the Final Fall," http://tele.com (January 8, 2001).

[22] *Id.*

[23] P. J. Howe, "DSL Providers Fail Without Deep Pockets," *The Deseret News* (December 20, 2000) at C03.

[24] "Covad Restructuring More Drastic Than Expected, Journal Reports," http://www.clec.com (February 21, 2001).

[25] J. Camp, *et al.*, Morgan Stanley, Dean Witter, *Investext Company Report* No. 2394704, Covad Communications Group (December 14, 2000).

local exchange carriers (CLECs) ... They didn't have stringent enough requirements for the financial health of their business partners."[26]

[26] V. Ryan, "Headed for a Fall?," *Telephony* (December 18, 2000) (quoting Patrick Hurley, DSL analyst at TeleChoice).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 26 2001

William Taylor

Attachment A

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